

In the Matter of)
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)
Applications Filed For Consent To Transfer) WC Docket No. 06-106
Control Of Mobile Satellite Ventures)
Subsidiary LLC From Motient Corporation And)
Subsidiaries To SkyTerra Communications, Inc.)

- 1 -

party in the proposed transaction.²

Highland was recently engaged in a highly contentious proxy contest in which it sought to oust Motient's Board of Directors for mismanagement of Motient and Motient's assets. While preliminary results of that contest indicate that Highland's efforts were unsuccessful, the official report from the inspectors regarding the election will not be submitted until a reconvened shareholder meeting on August 4.³

Based on the limited information made available to the public by Highland,⁴ Highland had – and continues to have – reason to believe that the very fact that Motient is embarking on the transaction that is the subject of the pending Application without submitting the transaction to a shareholder vote, and the substantial change in Motient's structure and asset base that would result from the proposed transaction, exemplifies the mismanagement that Highland was seeking to address through its proxy contest.

For this and all the reasons that follow, Highland is concerned that the SkyTerra transaction is not in the public interest. Because the Applicants have

² If the proposed transaction is consummated, SkyTerra would increase its ownership of MSV LP and Highland would receive shares of SkyTerra in exchange for its shares of Motient.

³ On July 14, 2006, Henry Goldberg, Goldberg, Godles, Weiner & Wright, filed an *ex parte* with the Commission, on behalf of Motient, placing into the record a Reuters news story reporting on the outcome of Highland's proxy challenge.

⁴ The existence of the proxy contest and Motient's secrecy severely impeded Highland's ability to obtain detailed and reliable information concerning the proposed transaction and its likely impact.

failed to provide sufficient information for the Commission to make a public interest determination, and because Highland, and, presumably, other public stockholders, do not themselves have, access to such information, Highland respectfully requests that there be a full and complete inquiry into all the relevant facts before the Commission rules on the pending Application.

II. DISCUSSION

A. The Applicants Fail to Meet Their Burden of Demonstrating that the Potential Benefits of the Proposed Transaction Outweigh Its Potential Harms.

The Applicants provide a decidedly one-sided and limited description of the proposed transaction, choosing to focus only on those aspects of the transaction that affect MSV. However, it is abundantly clear from the Applicants' press releases and from other publicly-available documents that the parties to the transaction view the transaction as a complete realignment of ownership interests in two companies, MSV (which, as a result of the transaction, is to be consolidated under SkyTerra) and TerreStar Networks ("TerreStar") (to be consolidated under Motient).⁵

SkyTerra currently owns approximately 16% of MSV and 13% of TerreStar. Motient currently holds approximately 43% of MSV and 54% of TerreStar. If the transaction is approved, SkyTerra's interest in MSV will increase to approximately 70%, while Motient will increase its ownership in TerreStar to approximately 74%, effectively placing MSV and TerreStar under separate, and consolidated, corporate

⁵ See e.g., Press Release, *Motient and SkyTerra Announce Transactions to Consolidate Ownership of Mobile Satellite Ventures and TerreStar Networks*, Motient Corporation, May 8, 2006.

control.⁶

Commission precedent places on all applicants seeking to transfer control of licenses “the burden of demonstrating that the potential public interest benefits of the proposed transfer outweigh the potential public interest harms.”⁷ The Applicants here fail both to provide any factual support for their claims regarding

⁶ Motient will retain a small non-voting stake in MSV, and SkyTerra will retain an approximate 12% interest in TerreStar.

⁷ See, *Verizon Communications Inc. and MCI, Inc. Applications for Approval of Transfer of Control*, WC Docket No. 05-75, para. 194, rel. Nov. 17, 2005 (hereinafter “*Verizon/MCI Order*”). In the *Verizon/MCI Order*, at paras. 195-96, the Commission set out its criteria for evaluating claimed public interest benefits in light of potential public interest harms in the context of mergers. It stated, in relevant part, and in terms equally applicable to all transactions regarding which the Commission must make a public interest determination:

There are several criteria the Commission applies in deciding whether a claimed benefit is cognizable. First, the claimed benefit must be transaction-or merger-specific. ... Second, the claimed benefit must be verifiable. Because much of the information relating to the potential benefits of a merger is in the sole possession of the Applicants, they are required to provide sufficient evidence supporting each benefit claim [sic] so that the Commission can verify the likelihood and magnitude of the claimed benefit. In addition, as the Commission has noted, “the magnitude of benefits must be calculated net of the cost of achieving them.” Furthermore, speculative benefits that cannot be verified will be discounted or dismissed

Finally, the Commission applies a “sliding scale approach” to evaluating benefit claims. Under this sliding scale approach, where potential harms appear “both substantial and likely, the Applicants’ demonstration of claimed benefits also must reveal a higher degree of magnitude and likelihood than we would otherwise demand.” On the other hand, where potential harms appear less likely and less substantial, as in this case, we will accept a lesser showing to approve the merger.

While the proposed transaction is not a merger, the complexity of its stock-for-partnership-interests structure, which consolidates control of MSV with SkyTerra (and, as discussed below, consolidates control of TerreStar with Motient) merits similar scrutiny.

the benefits they say will accrue to MSV as a result of the proposed transaction *and* wholly fail even to acknowledge the existence of potential harms to TerreStar that could also result.

1. **The Proposed Transaction has Potentially Significant Competitive Implications in the Market for Critical Public Safety and First-Responder Services and for the Provision of Services in Rural and Remote Areas.**

TerreStar is the U.S. entity that is building out an S-band satellite and terrestrial communications network under a reservation of spectrum granted by the Commission to its Canadian partner, TMI Communications (“TMI”). TMI is one of only two remaining U.S.-authorized mobile satellite service (“MSS”) licensees in the 2 GHz band.⁸ MSS is a radiocommunication service that involves transmissions between mobile earth stations and one or more space stations.⁹ As the Commission is well aware, MSS is highly valued because of its ability to provide mobile communications to areas where coverage by terrestrial systems is difficult or impossible, such as remote or rural areas and non-coastal maritime regions.

The Commission does not view other services, in particular terrestrial commercial mobile radio service (“CMRS”), as close substitutes for MSS. The critical importance of MSS was graphically demonstrated in the aftermath of the bombings on September 11, 2001, and following the destruction caused by

⁸ Because of the contractual and corporate relationships between TMI and TerreStar, we will sometimes refer herein to “TMI/TerreStar” as an authorized provider of 2 GHz MSS, although we recognize that TMI is the entity that actually holds the authorization from the Commission at this time.

⁹ *See Flexibility for Delivery of Communications by Mobile Satellite Service Providers in the 2 GHz Band, the L-Band, and the 1.6/2.4 GHz Bands*, MO&O and Second Order on Reconsideration, IB Dkt. No. 01-185, FCC 05-30, para. 7, rel. Feb. 25, 2005 (hereinafter *2nd Flexibility Order*).

hurricanes Katrina, Rita and Wilma in 2005, when terrestrial wireless base stations were out of commission for an extended period, and MSS provided essential communications links for first responders. These unfortunate recent events were undoubtedly factors in the renewed interest in MSS as a means to address shortcomings in existing emergency communications networks in the United States.

However, a limitation of MSS is that satellite signals can be attenuated or blocked in urban canyons and in other circumstances where a user may be out of a satellite's direct line of sight. In an effort to remedy this deficiency, the Commission promulgated rules under which MSS operators would be permitted to use their assigned MSS spectrum to provide ancillary terrestrial components ("ATC"), finding that MSS, when combined with ATC, would, *inter alia*, enhance spectrum efficiency, eliminate operational and transactional difficulties and costs for MSS providers, and "enhance the ability of the national and global telecommunications systems to protect the public by offering ubiquitous service to law enforcement, public aid agencies, and the public, and would strengthen competition in the telecommunications market."¹⁰ Conceptually, by combining the positive attributes of both terrestrial and satellite systems, a more robust network could be developed.

At present, only a handful of service providers are licensed to operate in one or more of several spectrum bands, primarily the 2 GHz (or S-Band), the L-Band and the 1.6/2.4 GHz ("Big LEO") bands, and, thus, are potentially capable of providing the critical benefits of MSS. The principal MSS service providers that are already active in, and/or have immediate plans to provide service to, the U.S.

¹⁰ *Id.*, at para. 9.

market include MSV, Inmarsat, Iridium, Globalstar, ICO and TMI/TerreStar. Most of these entities have announced plans to offer combined MSS/ATC services.

Although the Commission views all of the MSS service providers as generally competing in the same product market,¹¹ the Commission has recognized that there are differences that make each of the three principal MSS allocations unique.¹² One of the unique aspects of the 2 GHz MSS (S-Band) allocation lies in the fact that the Commission has fairly recently completed a proceeding to harmonize this spectrum internationally, and – in addition to the public safety and rural/remote implications common to all MSS providers – has cited maintaining this globally harmonized 2 GHz MSS spectrum as an important Commission concern.¹³ Although the Commission initially authorized eight entities to operate in this band, only two entities remain authorized today – one of which, as noted above, is TMI/TerreStar.

In that the proposed transaction could potentially affect both MSV's build out of its L-Band network and TMI/TerreStar's build out of its S-Band network and,

¹¹ See *Use of Returned Spectrum in the 2 GHz Mobile Satellite Service Frequency Bands*, IB Dkt. Nos. 05-220 and 05-221, FCC 05-204, para. 33, rel. Dec. 9, 2005 (hereinafter “*2 GHz Reassignment Order*”).

¹² See *Flexibility for Delivery of Communications by Mobile Satellite Service Providers in the 2 GHz Band, the L-Band, and the 1.6/2.4 GHz Bands; Review of the Spectrum Sharing Plan Among Non-Geostationary Satellite Orbit Mobile Satellite Service Systems in the 1.6/2.4 GHz Bands*, Report and Order and Notice of Proposed Rulemaking, IB Dkt. Nos. 01-185, 02-364, FCC 03-15, para. 4, rel. Feb. 10, 2003.

¹³ *2 GHz Reassignment Order*, at para. 46 (“Achieving harmonized spectrum in the International Table of Frequency Allocations is the result of complex negotiations between the United States and other countries, and this spectrum is not easily replaceable.”).

thus, given the market implications of the transaction, for public safety, homeland security and rural and other remote area services, the Commission should carefully evaluate the likely impact on both MSV *and* TerreStar of the proposed transaction before deciding whether to grant the pending Application.

2. **The Application Contains No Factual Support for Its Assertion that the Transaction Will Serve the Public Interest by Strengthening MSV.**

The Applicants baldly claim that: “[g]rant of this application will serve the public interest by facilitating MSV’s development of its integrated satellite and terrestrial communications network.” Application, at 6. However, the Application contains no facts whatsoever to support this assertion. Rather, the Applicants merely mention MSV’s “new contract with Boeing Satellite Systems, Inc. for the construction and delivery of three next-generation transparency-class L band satellites to serve the Western Hemisphere,” *id.*, and set forth the potential for enhanced services and increased competition that deployment of those satellites will bring.¹⁴ The Applicants then go on to say (in a statement that seems to undercut their purported public interest argument) that “MSV is ahead of the Commission’s milestone schedule.” *Id.*, at 7, assumedly with respect to construction and deployment of the Boeing satellites.

Just *how*, one wonders, will implementation of *already* existing plans to

¹⁴ The Applicants don’t say what effect, if any, the proposed transaction will have on the respective rights and obligations of the parties under this contract, or whether MSV would be in a better or worse position with respect to its ability to honor the contract’s terms were the proposed transaction to be approved (a point Highland urges the Commission to pursue).

create a wireless broadband network through the deployment of *already* contracted-
for satellites, the construction of which is apparently *already* ahead of schedule, be
“facilitated” by the proposed transaction?¹⁵ The Applicants offer only the following:
“[a]s a result of the proposed transaction, MSV will be controlled by a publicly
traded company, SkyTerra, thereby enabling MSV to more easily attract capital and
to engage in arrangements with potential strategic partners that are essential to
MSV’s ability to deploy its next-generation network.” Application at 7.

The truth of this assertion, however, is far from self-evident. First, in a
recent presentation to shareholders,¹⁶ discussed below, Motient took great pains to
explain that MSV *currently* benefits from strong *existing* sponsorship (Motient,
SkyTerra, Apollo, TMI/BCE, Columbia/Spectrum), so one has to ask what specific
advantages are to be derived by disturbing that existing sponsorship structure as

¹⁵ Admittedly, there is some indication that perhaps all is not as rosy for MSV as
the Applicants have sought to portray: while the Applicants were preparing their
request for Commission approval of the transfer of control of MSV’s licenses, MSV
was apparently simultaneously engaged in a renegotiation of the Boeing contract.
Indeed, a letter agreement amending the contract with Boeing was signed on
May 19, 2006, just two days after the instant Application was filed. That
amendment, according to a notice that MSV issued to its noteholders on May 24,
2006, caused MSV to miss a milestone with respect to its South American satellite,
resulting in the loss of its South American license and a \$2.25 million bond
forfeiture. *See*, MSV Letter to Noteholders dated May 24, 2006, found at
[http://www.msvlp.com/investor/pdf/Report-to-Noteholders-May-24-2006-Boeing-
Contract.pdf](http://www.msvlp.com/investor/pdf/Report-to-Noteholders-May-24-2006-Boeing-Contract.pdf) (last visited July 17, 2006), *and see*, the Public Notice at fn. 4
(discussing the surrender of MSV’s South American license). The omission of any
mention of this matter in the Application further underscores the need for a
complete exploration of *all* the facts relevant to the potential transfer of control.

¹⁶ Motient Corporation, Investor Presentation dated June, 2006, found at
[http://media.corporate-
ir.net/media_files/irol/11/110135/InvestorPresentation_62306.pdf](http://media.corporate-ir.net/media_files/irol/11/110135/InvestorPresentation_62306.pdf) (visited July 17,
2006).

set forth in the Application. Application at 3-4.

Moreover, absolutely no support for the Applicants' statement is provided. Commission lore is littered with examples of licensees controlled by publicly traded companies that have failed spectacularly to implement grandiose plans, as a brief history of the Big LEO and 2 GHz proceedings illustrate, and, conversely, the Commission has seen some extraordinary successes from private, even start-up, companies with little more than a vision and the necessary commitment to see it through. The Commission should ask the Applicants to substantiate their position *with facts* and not allow them merely to rely on unsupported rhetoric regarding possible public interest benefits that might flow from the proposed transaction.

3. **Any Public Interest Analysis Must Take into Consideration the Transaction's Impact on TerreStar as well as on MSV.**

In addition, while the Applicants attempt to argue that the proposed transaction will serve the public interest because it will somehow facilitate development of *MSV's* L-band satellite and terrestrial communications network, they are totally silent regarding the likely impact that the proposed transaction will have on TMI, the other affected Commission licensee, and TMI/TerreStar's ability to build out its planned 2 GHz system.

As previously discussed, TMI is one of only two remaining MSS licensees in the 2 GHz band and, as also previously discussed, the early provision of hybrid satellite and terrestrial MSS/ATC services at 2 GHz is an important Commission goal. Surely, a transaction that may threaten the ability of TMI/TerreStar to meet *its* milestones, attract capital, or otherwise advance its developmental plans cannot

be said to be in the public interest, especially if such developments would leave only one remaining 2 GHz licensee occupying recently harmonized MSS spectrum at 2 GHz at a time when first responders here at home and globally could be – and should be – implementing new MSS/ATC systems.

Accordingly, any consideration of asserted public interest benefits to MSV's L-band network that might flow from the proposed transaction must be weighed against any potential public interest harms to TMI/TerreStar's plans to build its S-band network. In this regard, there are several facts that Highland wishes to call to the Commission's attention:

First, TerreStar is dependent on MSV's intellectual property in building out its network. Motient has noted in publicly-filed documents that, "TerreStar's ability to effectively use ATC depends on its continued ability to license certain intellectual property from MSV, including patents covering ATC operations. TerreStar has a perpetual, royalty free license to such technology pursuant to its agreement with MSV."¹⁷ The public knows little, if any, of the details of the referenced agreement between TerreStar and MSV. It is certainly worth asking MSV what assurances it can give the Commission that TerreStar will benefit fully from the intellectual property assets at MSV, assuming that the proposed transaction closes as planned.

Second, the Applicants assert that the transaction will serve the public interest because, following the transaction, MSV will be controlled by a company that "has significant experience in the satellite and telecommunications industries

¹⁷ See Motient's 10K for the year ended December 31, 2005, at 5.

which will benefit MSV in its continued development of a next-generation system.” Application at 7. In fact, much of the satellite experience that is crucial to MSV’s success resides at the level of MSV itself, and it is reasonable to assume that TerreStar has relied on such experience since its spin-out from MSV in 2002, and continues to rely upon it at present. So not only have the Applicants failed to demonstrate how the management expertise (to which they already have access through SkyTerra’s existing stake in MSV) will, by virtue of this transaction, result in a public interest benefit, they have not addressed any potential loss of availability of expertise by the parties’ planned dissociation of MSV and TerreStar.

Third, Motient’s public filings indicate that TerreStar may already be in a precarious financial situation. If this is indeed the case, and absent any previously undisclosed assurances of incremental funding, certain aspects of the proposed transaction could significantly worsen TerreStar’s situation. For example, Motient’s 10Q for the year ended December 31, 2005, at pages 36-37, indicates that TerreStar will likely face a cash deficit in 2006 under its current business plan. Motient’s 10K for the year ended December 31, 2005, at page 59 states that, “If TerreStar is unable to secure financing from a third party source to meet this cash deficit in 2006, then Motient may decide that it will support TerreStar's funding obligations with cash on hand at Motient. However, Motient is under no obligation to do so.”

Assuming the proposed transaction closes according to plan, Motient, as TerreStar’s corporate parent, may be expected to provide needed funds to its cash-

strapped subsidiary, but may not be *in a position* to do so: Motient has stated in its press release announcing the transaction that, *as a direct result of the transaction*, Motient will incur a \$50 to \$80 million tax liability.¹⁸ However, in its 10Q for the period ended March 31, 2006, at page 36, Motient stated that, “As of March 31, 2006, the Company had \$149 million of unrestricted cash on hand, of which approximately \$67 million was held at Motient and \$82 million was held at TerreStar.” Thus, it appears that much if not all of the \$67 million in cash held at the Motient level will be used to pay the SkyTerra transaction tax bill, leaving little if any cash to fund TerreStar’s cash needs and obligations.

Questions raised by the above facts should give the Commission pause to consider whether TerreStar is likely stable enough to operate under the proposed ownership structure.

Other questions the Commission may want to raise with the Applicants are:

- What effect would the proposed transaction have on both the relevant companies’ ability to meet their stated objectives and the milestones established for them by the Commission? As discussed briefly in Section II. A. 2 above, Motient recently released an “Investor Presentation” that was intended, in part, to justify the company’s decision to enter into the SkyTerra transaction.¹⁹ That presentation states that “Both companies [MSV and TerreStar] have **strong existing sponsorship** – Motient, SkyTerra, Apollo,

¹⁸ See also, Motient’s 8-K, filed May 9, 2006, at 2 of Exhibit 99.1 L(the press release), indicating that Motient estimates that its corporate tax liabilities related to the initial exchange will range from \$50 to \$80 million based on then-current stock prices, after offsets from Motient’s net operating losses.

¹⁹ A slide in the presentation titled “Wall Street Supports Transaction” quotes an analyst’s report as stating that, “We believe the FCC wanted MSV and TerreStar to have distinct majority owners, which prior to this transaction was not the case.” Highland notes that this self-serving statement was provided by Tejas, which, in turn, owns CTA, a paid advisor to Motient. CTA is a defendant in a pending suit filed by Highland alleging improper payments to CTA by Motient.

TMI/BCE, Columbia/Spectrum.” Emphasis in original. What assurances have the Applicants provided to the Commission that *both* companies will continue to enjoy similar strength of sponsorship *post*-transaction? What evidence have the Applicants produced in support of their claim that SkyTerra alone would be better able to raise capital than the current team of existing sponsors? What impact will the transaction have on Motient’s ability to raise capital for TerreStar in a post-transaction environment?

- As noted above, the Application touts MSV’s contract with Boeing, but omits to mention that TerreStar also has a satellite construction and launch contract with Space Systems/Loral. How will the transaction – and, more specifically, the \$50 - \$80 million tax liability it will impose on Motient – affect TerreStar’s ability to maintain its commitments under *its* satellite development contract?
- What effect would the proposed transaction have on the first responders who are anxiously awaiting the promised deployment of MSV’s *and* TMI/TerreStar’s ATC networks? There are differences between L-Band and S-Band spectrum and the kinds of systems that can be built to utilize each band, as is reflected in the current business plans of the two licensees that will be directly affected by this transaction (MSV and TerreStar). The Commission should determine whether the proposed restructuring of these companies would indeed increase competition for wireless broadband services, as the Applicants assert, or whether it will cause significant delay or disruption in the build out of one or both of the proposed networks.

Highland is not asking the Commission to choose winners or losers in the marketplace. Rather, the Applicants have proposed a particular transaction and have asked the Commission to rule affirmatively that the proposed transaction is in the public interest. The proposed transaction involves stakes for the public safety community and for the efficient use of MSS spectrum at 2 GHz that are quite high, so Highland is merely asking the Commission to look beyond the statements made by the Applicants in their Application to statements they have made in other public contexts in deciding whether the application indeed is in the public interest.

B. Pending Litigation Should Provide Many Answers to the Questions that the Commission Must Resolve Before Deciding Whether the Proposed Transaction is in the Public Interest.

On June 19, 2006, Highland filed in the District Court of Travis County, Texas (53rd Judicial District) an Original Petition and Application for Temporary and Permanent Injunction (“Petition”) against Motient Corporation and Capital & Technology Advisors, Inc. (“CTA”) to, *inter alia*, rescind the agreement between Motient and SkyTerra that is the subject of the instant Application.²⁰ A hearing on Highland’s request for a temporary injunction was set for the morning of September 5 and a trial on the merits of Highland’s request for permanent injunction and rescission of the agreement was set for the morning of October 16, 2006.

On July 6, 2006, Highland served written discovery requests on Motient and CTA to enable Highland to prepare effectively to present its case and, on July 11, Highland filed a motion to expedite that discovery,²¹ so that it could be completed before the September 5 hearing.²² The following are samples of the discovery requests filed in the litigation:

1. Identify all CTA consultants, advisors, and other personnel who performed work for Motient since January 1, 2004 and, for each individual: (1) list the total amount of time they spent performing work for Motient; (2) list the total amount of time they spent performing work for Motient relating to any proposed or actual transaction with SkyTerra; and (3) describe the nature of the work performed for Motient. *Plaintiffs’ First Set of Interrogatories and*

²⁰ The Petition raises serious questions about Motient’s motivations in negotiating the SkyTerra transaction and about the enforceability of the proposed transaction with SkyTerra under the Investment Company Act of 1940 (the “ICA”).

²¹ Plaintiffs’ Motion to Expedite Discovery and to Shorten the Time for Responding to Notices of Depositions, Interrogatories, and Requests for Production and Disclosures, dated July 11, 2005.

²² On July 14, 2006, Motient and CTA removed the case to federal court; Highland will move to remand.

Requests for Admission to Capital & Technology Advisors, Inc.,
Interrogatories and Requests for Admissions, Interrogatory No. 1 at 6.

2. Identify and describe all advice, analysis, and recommendations that CTA provided to Motient regarding any actual or proposed transaction with SkyTerra. *Id.*, Interrogatory No. 3 at 7.
3. Admit that CTA has provided advice to Motient regarding an actual or proposed transaction between Motient and SkyTerra. *Id.*, Interrogatory No. 6 at 8.
4. [Provide] [a]ll documents relating to any actual or proposed transaction with SkyTerra. *Plaintiffs' First Request for Production to Motient Corporation*, Requests for Production, Request No. 4 at 7.
5. [Provide] [a]ll documents relating to any taxes that would be payable by Motient as a result of any proposed transaction with SkyTerra. *Id.*, Request No. 5 at 8.
6. [Provide] [a]ll communications with CTA (including but not limited to any CTA officer, employee, counsel, or board member) regarding SkyTerra, including but not limited to any proposed or actual agreement or transaction with SkyTerra. *Id.*, Request No. 10 at 8.
7. [Provide] [a]ll documents relating to any consulting work performed by CTA for Motient, and any advice or analysis regarding such an agreement or transaction. *Id.*, Request No. 11 at 8.
8. [Provide] [a]ll documents evidencing or relating to the work that CTA performed for Motient in return for payments, fees, and consideration described in Request No. 4, including but not limited to all documents relating to the "ongoing operational consulting" that CTA is providing (or has provided) relating to Motient's "core communications business" referenced in Motient's 2003 Form 10-K. *Id.*, Request No. 14 at 8.
9. [Provide] [a]ll communications with Motient (including but not limited to any Motient officer, employee, counsel, or board member) regarding SkyTerra, including but not limited to any proposed or actual agreement or transaction with SkyTerra. *Plaintiffs' First Request for Production to Capital & Technology Advisors, Inc.*, Request No. 1 at 7.
10. [Provide] [a]ll documents relating to any actual or proposed agreement or transaction between Motient and SkyTerra, including but not limited to all documents relating to any consulting work performed by CTA in connection with such an agreement or transaction, and any advice or analysis regarding such an agreement or transaction. *Id.*, Request No. 2 at 7.

11. All documents relating to the work that CTA performed for Motient in return for the payment, fees, and consideration described in Request No. 4, including but not limited to all documents relating to the “ongoing operational consulting” that CTA is providing/has provided relating to Motient’s “core communications business” referenced in Motient’s 2003 form 10-K. *Id.*, Request No. 5 at 7.

Answers to these and other questions and requests that will emerge during discovery in the litigation, as well as the testimony in the depositions scheduled for August,²³ should shed much light on the true nature of the transaction under consideration by the Commission and significantly help inform the Commission’s ultimate action.

III. CONCLUSION

In conclusion, Highland believes that the proposed transaction raises substantial questions of fact regarding whether the public interest would be served by the Commission’s granting of the Applicants’ request. Accordingly, the Commission should take the time to make a full and complete investigation of the public interest implications of the proposed transaction by, for example, awaiting the completion of expedited discovery in the related civil lawsuit, and should not merely accept the Applicants’ unsupported assertions at face value.²⁴

²³ The Motion to Expedite also proposed a highly condensed schedule for the taking of depositions, commencing on August 23, 2006, and continuing through August 29, 2006.

²⁴ If the Applicants do not do more to support their Application, the Commission may want to consider using its power to designate the matter for a hearing. Indeed, as the Commission has noted, with respect to applications involving Title III licenses, if the Commission cannot find that an application is in the public interest, and substantial issues of material fact are raised, the Commission MUST designate

Respectfully submitted,

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the application for a hearing. *See, Verizon/MCI Order, supra.*, at fn. 62